

## **REMARKS**

Support for the amendment of claim **15** may be found in Applicants' specification as originally filed at page 20. No new matter has therefore been introduced.

In the 02/02/2005 Office Action, the Examiner has rejected pending claims **1-21**. After entry of the foregoing amendments, claims **1-21** remain pending in the application. Reconsideration of the currently pending claims and allowance of all claims **1-21** is respectfully requested.

### **35 USC § 103(a)**

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest **all the claim limitations**. (MPEP, 2143; emphasis added). Additionally, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not in Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Claims **1-21** stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wong *et al.* (US 5890175, hereafter 'Wong') in view of Bezos *et al.* (US 6029141, hereafter 'Bezos').

The Examiner proposes that Wong "substantially teaches" an electronic commerce system having a host in communication with a plurality of distributors, and a store builder with consumer-level electronic access via a website maintained separate from the store. The Examiner further proposes that Wong "substantially teaches" a method of having a store owner electronically access a host, select a store type, setup an account, "customizing the appearance", and customizing a product mix commensurate with a specialty store.

Next, the Examiner suggests that Bezos teaches devising a commission schedule in addition to stores providing a consumer with access to items that are assigned a unique tag.

Since the Examiner has failed to indicate which of Applicants' claim elements purportedly correspond to the cited elements of Wong, Applicants will provisionally consider the first sentence of the second paragraph of numbered element 4 appearing on page 2 of the Office Action dated 02/02/2005 as perhaps intended by the Examiner to reference Applicants' claim 1 and such claims bearing dependence therefrom, and the second sentence of the second paragraph of numbered element 4 appearing on page 2 of the Office Action dated 02/02/2005 as perhaps intended by the Examiner to reference Applicants' claim 15 and such claims bearing dependence therefrom. Since the Examiner has failed to indicate which of Applicants' claim elements purportedly correspond to the cited elements of Bezos, Applicants will provisionally consider the first sentence of the first full paragraph of page 3 of the Office Action dated 02/02/2005 as perhaps intended by the Examiner to reference Applicants' claim 15 and such claims bearing dependence therefrom.

Notwithstanding the guesswork that Applicants have engaged *vide supra* in attempting to determine or otherwise divine what the Examiner intends to communicate, Applicants are affirmatively unaware as to which elements of which of Applicants' claims the Examiner intends to demonstrate as having corresponding relevance to the citations of Wong given as: col. 3, lines 35-50; col. 4, lines 5-15; col. 3, line 60 thru col. 4, line 10; Fig. 2; Fig. 3; Fig. 4; "fig. 1 1"; col. 6, line 60 thru col. 7, line 5; Figs. 2-5, 7-8; col. 3, lines 20-40; and col. 4, lines 1-67. Clarification on this issue is respectfully requested so that the record of prosecution is rendered clear for potential appeal. Furthermore, Applicants are affirmatively unaware as to whether the Examiner intends to reference Fig. 1 or Fig. 11 in the appearance of "(fig. 1 1)" in line 7 of numbered paragraph 4 appearing on page 2 of the Office Action. Clarification on this point is respectfully requested as well.

Applicants are also affirmatively unaware as to which elements of which of Applicants' claims the Examiner intends to demonstrate as having corresponding relevance to the citations of Bezos given as: col. 2, lines 1-20; "col. 7:", lines 35-40; col. 6, lines 20-25; col. 3, lines 10-25; "col. 1 1", lines 55-65; col. 7, lines 10-15; col. 1, lines 25-50; and col. 3, lines 25-40. Clarification on

this issue is respectfully requested so that the record of prosecution is rendered clear for potential appeal. Furthermore, since the Examiner has used the Helvetica or Arial font in generation of the instant Office Action, Applicants are affirmatively unaware as to whether the Examiner intends to reference col. 1 or col. 7 in the appearance of “co1. 7” (Arial font) in line 2 of the first full paragraph of page 3 of the Office Action. Clarification on this point is respectfully requested so that Applicants may be given fair and ample opportunity to respond. Additionally, Applicants are affirmatively unaware as to whether the Examiner intends to reference column 1 or column 11 in the appearance of “col. 1 1” in line 3 of the first full paragraph of page 3 of the Office Action. Clarification on this point is respectfully requested as well.

The Examiner then goes on to propose that “[i]t would have been obvious to one having ordinary skill in the art at the time of the invention to have used the commission and access via a distributor, to items assigned a unique tag as in Bezos in the system and method of Wong since the commission and access of Bezos would have promoted marketing of goods and exposure as taught by Bezos [...]” Applicants, however, are affirmatively unable to decipher what the Examiner intends to communicate here. Presumably, the appearance of “one having ordinary skill in the art” is a typographical error that should read “one having ordinary skill in the art”. That notwithstanding, the remainder of the sentence is so poorly structure and/or lacking punctuation that it renders the sentence impossible to understand. Accordingly, since the Applicants are affirmatively unaware as to what the Examiner intends to communicate, Applicants are unable to consider and present a substantive response. Applicants respectfully request clarification on this point so that the record of prosecution is rendered clear for potential appeal.

The Examiner then suggests that “[i]t also would have been obvious to have customized the store by a combination of all the options of claim 3 since these are well known in the store building art for further distinction of store sites.” Applicants, however, are affirmatively unaware as to whether the Examiner intends to reference Applicants’ claim 3, claim 3 of the Bezos reference or claim 3 of the Wong reference. Clarification on this point is respectfully requested so that the record of prosecution is rendered clear.

The Examiner then goes on to suggest that “[i]t also would have been obvious to have the product mix commensurate with a key word store since this is well known in the art for customer searching and which would have been adopted for the intended use of searching the mall of Wong.” Applicants, however, are affirmatively unaware as to the meaning or context of Examiner’s use of the word “commensurate” in this sentence. The Merriam-Webster dictionary defines commensurate as “equal in measure or extent” and “corresponding in size, extent, amount or degree”. None of these definitions assist with understanding the Examiner. Did the Examiner rather intend to suggest that it would have been obvious to employ product identifiers for use with a keyword search system? Clarification on this point is respectfully requested so that the record of prosecution is rendered clear for potential appeal.

The Examiner further suggests that “[i]t also would have been obvious to have permitted the ordering of personalized items since this is well known in the ad and would have been adopted for the intended use of at least applications to clothing items [...]” The appearance of “well known in the ad” is likely a typographical error that should read “well known in the art”. Clarification on this point is respectfully requested.

The Examiner then proposes that it would have been obvious for a store owner to operate multiple stores and that the stores be capable of operation in such a fashion so as to not have the host discernable by the customer. Finally, the Examiner suggests that it would have been obvious to provide for the de-selection of product items, since this would have been purportedly associated with the “intended use” of generating specialty stores.

The Examiner further proposes that Wong discloses a class designation for identifying product items available from a plurality of distributors such that members of a same class are assigned a unique tag. The Examiner suggests that Wong teaches such a procedure by describing a store or establishment that is assigned a store ID, which ID is available to members of the particular store in which the members can purportedly access particular group ID’s, with the different stores each have their own unique ID’s that allow members to access certain items based on group ID’s and not others.

The Examiner also proposes that Bezos specifically provides the requisite motivation or suggestion to combine the Wong reference with Bezos; however, the Examiner has failed to specifically cite where such a suggestion in the Bezos reference may be found. “With respect to core factual findings in a determination of patentability, [the Examiner] cannot simply reach conclusions based on [his/her] own understanding or experience – or on [his/her] assessment of what would be basic knowledge or common sense. Rather [the Examiner] must point to some concrete evidence in the record in support of these findings.” *In Re Zurko*, 258 F.3d 1379 (2001).

**In view of the uncertainties associated with the reference citations having not been specifically applied to the Applicants’ claims and claim elements, the absence of reference citations in support of the purported motivation to combine reference teachings, various spelling and typographical errors, and the poor wording of sentences, Applicants respectfully request that the next Office Action be reset to non-final status to correct these errors and omissions, thereby providing Applicants with a full and fair opportunity to substantively respond to the arguments raised by the Examiner.**

The preceding notwithstanding, Applicants respectfully traverse the 35 U.S.C. §103(a) rejections, such as they may be currently understood (however potentially incorrectly interpreted) by the Applicants.

Applicants submit that Wong in combination with Bezos does not teach or suggest an electronic commerce system that has a host in communication with a plurality of distributors, each of the distributors offering an addressable inventory of merchandise, where the host is adapted to sort the inventories of plural distributors by utilizing a unique inventory item object-oriented class designation, wherein members of a substantially similar object-oriented data class are assigned a unique tag. See Applicants’ claim 1. Further, Wong in combination with Bezos does not teach or otherwise suggest an electronic commerce system that operates in conjunction with a store

builder app that has communications access to a host where the store builder app is configured to request at least one unique object-oriented data class inventory tag, where the host then creates a store for the store builder and the store subsequently provides a consumer with access via a distributor to inventory items that have been assigned a unique object-oriented data class tag as set forth in claim 1, from which claims 2-14 variously depend.

After deliberate and careful inspection, Applicants are unable to find any motivation or suggestion in the Bezos reference, nor in the knowledge generally available to one of ordinary skill in the art, to modify Wong or to combine Wong with any other reference to practice the invention of claim 1. Additionally, because there is no motivation or suggestion to combine Bezos or Wong with any other reference to practice the invention of claim 1, there can be no reasonable expectation of success. Any expectation of success under such circumstances could only be regarded as unreasonable, at best. Accordingly, claim 1 may not properly be considered as obvious under § 103(a).

Inasmuch as claims 2-14 depend from, further limit and incorporate all of the elements of claim 1, these claims are also allowable over the cited art. Applicants therefore submit that claims 1-14 are allowable and respectfully request that the Examiner to withdraw the § 103(a) rejections of the same.

Applicants further submit that Wong in combination with Bezos does not teach or suggest a method for implementing an e-commerce system in accordance with claim 1, where the method comprises providing a store owner with electronic access to a host that is adapted to display a plurality of store types. See claim 15, as amended. Furthermore, Wong in combination with Bezos does not teach or otherwise suggest the steps of selecting a store type, setting up an account as a unique store owner, customizing the store appearance, customizing a product offering, or providing a commission schedule utilizing an e-commerce system in accordance with claim 1. Why? Because the combination of Wong and Bezos does not disclose each and every element of the system claimed by Applicants in currently pending claim 1.

That is to say, Wong in combination with Bezos does not teach or suggest an electronic commerce system that has a host in communication with a plurality of distributors, each of the

distributors offering an addressable inventory of merchandise, where the host is adapted to sort the inventories of plural distributors by using a unique inventory item object-oriented class designation, wherein members of a substantially similar object-oriented data class are assigned a unique tag. Further, Wong in combination with Bezos does not teach or otherwise suggest an electronic commerce system that operates in conjunction with a store builder app that has communications access to a host where the store builder app is configured to request at least one unique object-oriented data class inventory tag, where the host then creates a store for the store builder and the store subsequently provides a consumer with access via a distributor to inventory items that have been assigned a unique object-oriented data class tag as set forth in claim 1.

After deliberate and careful inspection, Applicants are unable to find any motivation or suggestion in the Bezos reference, nor in the knowledge generally available to one of ordinary skill in the art, to modify Wong or to combine Wong with any other reference to practice the invention of claim 15. Additionally, because there is no motivation or suggestion to combine Bezos or Wong with any other reference to practice the invention of claim 15, there can be no reasonable expectation of success. Any expectation of success under the circumstances could only be regarded as unreasonable, at best. Accordingly, claim 15 may not properly be considered as obvious under § 103(a).

Inasmuch as claims 16-21 depend from, further limit and incorporate all of the elements of claim 15, these claims are also allowable over the cited art. Applicants therefore submit that claims 15-21 are allowable and respectfully request that the Examiner to withdraw the § 103(a) rejections of the same.

The Examiner appears to suggest that a “group ID” or “store ID” disclosed in Wong would constitute a “class designation”; however, this is not the case. Equating the “group ID” or “store ID” of Wong with a “unique class designation” in accordance with Applicants’ invention demonstrates a lack of appreciation of the object-oriented characteristics of a class-type definition for the processing of data. Indeed, Applicants have developed a concern during the course of prosecution that Applicants’ invention is perhaps not being examined in the correct art unit, and therefore the Examiner is not sufficiently educated in the subject matter of object-oriented class designations to appropriately assess the level of ordinary skill in the art of

computer programming and data communications (not the arts of store building or providing commission/incentive programs).

It is important to again note that “[w]ith respect to core factual findings in a determination of patentability, [the Examiner] cannot simply reach conclusions based on [his/her] own understanding or experience – or on [his/her] assessment of what would be basic knowledge or common sense. Rather [the Examiner] must point to some concrete evidence in the record in support of these findings.” *In Re Zurko*, 258 F.3d 1379 (2001).

## **CONCLUSION**

Claims **1-21** are pending in the application. Reconsideration of the previously pending claims and allowance of all claims **1-21** is earnestly requested.

No amendment made herein was related to the statutory requirements of patentability unless expressly stated; rather any amendment not so identified may be considered as directed *inter alia* to clarification of the structure and/or function of the invention and Applicants’ best mode for practicing the same. Additionally, no amendment made herein was presented for the purpose of narrowing the scope of any claim, unless have argued that such amendment was made to distinguish over a particular reference or combination of references. Furthermore, no election to pursue a particular line of argument was made herein at the expense of precluding or otherwise impeding Applicants from raising alternative lines of argument later during prosecution or on appeal. Applicant’s failure to affirmatively present specific arguments is not intended to be construed as an admission to any particular point raised by the Examiner.

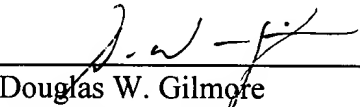


**In view of the uncertainties associated with the reference citations having not been specifically applied to the Applicants' claims and claim elements, the absence of reference citations in support of the purported motivation to combine reference teachings, various spelling and typographical errors, and the poor wording of sentences, Applicants respectfully request that the next Office Action be reset to non-final status to correct these errors and omissions, thereby providing Applicants with a full and fair opportunity to substantively respond to the arguments raised by the Examiner.**

Should the Examiner have any questions regarding this Response and Amendment or feel that a telephone conference with the undersigned would be helpful to advance prosecution of this matter, the Examiner is invited to call the undersigned at the number given below.

Respectfully submitted,  
ATTORNEY FOR APPLICANT

Date: August 02, 2005

  
\_\_\_\_\_  
Douglas W. Gilmore  
Attorney at Law  
Reg. No. 48690

NOBLITT & GILMORE, LLC  
4800 North Scottsdale Road  
Suite 6000  
Scottsdale, Arizona 85251

Telephone: (480) 994-9869  
Facsimile: (480) 994-9025

DWG:aes